

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
A Limited Liability Partnership
2 Including Professional Corporations
PETER H. KLEE, Cal. Bar No. 111707
3 PKlee@sheppardmullin.com
JOHN D. EDSON, Cal. Bar No. 185709
4 JEdson@sheppardmullin.com
CHRISTINA DING, Cal. Bar. No. 286009
5 CDing@sheppardmullin.com
501 West Broadway, 19th Floor
6 San Diego, California 92101-3598
Telephone: 619.338.6500
7 Facsimile: 619.234.3815

8 Attorneys for Allstate Insurance Company
(erroneously sued as "Allstate Property
9 and Casualty Insurance Company")

10 UNITED STATES DISTRICT COURT

11 CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION

12 MATTHEW POTURICH AND
13 TERESA POTURICH,

14 Plaintiffs,

15 v.

16 ALLSTATE INSURANCE
COMPANY, ALLSTATE PROPERTY
17 AND CASUALTY INSURANCE
COMPANY, and DOES 1 through 50,
inclusive,

18 Defendants.
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Case No. 5:15-cv-00081-GW-KKx

The Hon. Kenly Kiya Kato
Courtroom 3/4 Third Floor

**ALLSTATE'S MOTION TO
COMPEL QUALITY SHEDS, INC.
TO COMPLY WITH SUBPOENA
AND SHOW CAUSE ORDER**

Date: August 20, 2015
Time: 10:00 a.m.
Dept.: Courtroom 3/4

Complaint Filed: December 12, 2014
Trial Date: TBD

PRELIMINARY STATEMENT RE LOCAL RULE 37-2

On May 4, 2015, Allstate served a subpoena for documents on Quality Sheds, Inc., an S corporation owned by plaintiff Matthew Poturich. Quality Sheds' responses were due on June 5, 2015. Plaintiffs' counsel represented that she would be handling Quality Sheds' response and requested an extension, which was granted to June 12, 2015. After the extended deadline had passed, Allstate met and conferred with plaintiffs' counsel multiple times by email and telephone. Thereafter, plaintiffs' counsel finally agreed to produce responsive documents by July 13, 2015. No documents were ever provided. Pursuant to Local Rule 37-2.2, Allstate prepared a joint stipulation and provided it to plaintiffs' counsel. As of the date of this motion, Quality Sheds has not produced documents or responded to Allstate's further meet and confer efforts.

Pursuant to Local Rule 37-2.4, under such circumstances, the moving party must file a declaration from counsel establishing that opposing counsel failed to provide the opposing party's portion of the joint stipulation in a timely manner in accordance with Local Rule 37-2.2. Here, Allstate met and conferred with plaintiffs' counsel on multiple occasions by telephone and email in an attempt to informally resolve this discovery dispute. Plaintiffs' counsel agreed to produce responsive documents on July 13, 2015 – over five weeks after the documents were originally due. Allstate never received the documents and Quality Sheds has ignored Allstate's ongoing meet and confer attempts. Pursuant to Local Rules 37-2.4 and 37-4, this motion to compel is proper and necessary to prevent intentional further delay by Quality Sheds and plaintiffs.

I. INTRODUCTION

This motion to compel and for sanctions is straightforward. Allstate issued a subpoena to Quality Sheds, Inc., an S-corporation owned and operated by plaintiff Matthew Poturich. Allstate sought basic information related to the relationship between Quality Sheds and Mr. Poturich, Mr. Poturich's income through Quality

1 Sheds, and any relationship between Quality Sheds and the property at issue in this
2 lawsuit. Neither Quality Sheds nor plaintiffs have produced documents in response
3 to the subpoena, despite Allstate's meet and confer efforts.

4 As a backdrop, this lawsuit arises out of an alleged water and theft loss at one
5 of plaintiffs' properties. Plaintiffs allege that a pipe burst inside their Murrieta
6 property, causing flood damage. They hired a repair company to make emergency
7 repairs. Yet, they later alleged that the repair company workers stole some of their
8 personal property.

9 Early during the claim, Allstate made payments on the alleged loss. On one
10 check, Allstate included the lender as a co-payee because the lender was listed on
11 the policy declarations page. Plaintiffs protested that they had paid off their loan by
12 the time of their claim. Allstate investigated plaintiffs' allegations and discovered
13 that plaintiffs had made a false claim for additional living expense benefits and
14 stolen contents. Allstate then denied plaintiffs' claim for material
15 misrepresentations. Plaintiffs allege that Allstate improperly denied their claim.

16 The Court previously sanctioned plaintiffs for failing to produce discovery
17 responses, which they have still not provided. Because of plaintiffs' complete lack
18 of cooperation in discovery, Allstate has attempted to obtain information through
19 other sources such as Quality Sheds. But plaintiffs continue to stonewall Allstate's
20 right to conduct discovery in this matter. Allstate requests that this Court order the
21 following:

- 22 (1) Quality Sheds has waived all objections to Allstate's subpoena;
- 23 (2) Quality Sheds must produce documents responsive to Allstate's
24 subpoena without objections within 20 days of the Court's order;
- 25 (3) Under Rule 45(g), that Quality Sheds show cause why a contempt
26 citation should not be issued against it; and
- 27 (4) Quality Sheds and plaintiffs' counsel should be sanctioned \$2,960 for
28 Allstate's costs to bring this motion.

1 **II. STATEMENT OF FACTS**

2 On May 12, 2015, Allstate served a document subpoena on Quality Sheds,
3 Inc. (Declaration of Christina Ding ¶ 3, Ex. 1.) The subpoena sought documents
4 evidencing the relationship between Quality Sheds and plaintiff Matthew Poturich,
5 Mr. Poturich's purported income through Quality Sheds, and the relationship
6 between Quality Sheds and the property at issue in this matter. Plaintiffs' deadline
7 to respond was June 5, 2015. (*Id.*)

8 On May 28, 2015, plaintiffs contacted Allstate and requested a one-week
9 extension to respond to the subpoena, which was granted. (Ding Dec. ¶ 4.) After
10 the extended deadline passed, Allstate requested that the documents be provided and
11 invited a meet and confer conference. (Ding Dec. ¶ 5, Ex. 2.) Having received no
12 response, Allstate wrote again on July 2, 2015, to request a meet and confer
13 conference. (Ding Dec. ¶ 6, Ex. 3.) Again receiving no response, Allstate wrote a
14 third time to plaintiffs on July 7, 2015. (Ding Dec. ¶ 7, Ex. 4.) Plaintiffs finally
15 responded that day and the parties agreed to meet and confer telephonically. (Ding
16 Dec. ¶ 8, Ex. 5.)

17 On July 8 and 9, 2015, the parties met and conferred telephonically to discuss
18 acceptable documents responsive to Allstate's subpoena. (Ding Dec. ¶¶ 9-10, Ex.
19 6.) On July 10, 2015, plaintiff's counsel advised Allstate that Quality Sheds would
20 produce responsive documents on July 13, 2015, by email and overnight mail.
21 (Ding Dec. ¶ 11, Ex. 7.)

22 Having received no documents as promised, Allstate wrote to plaintiffs'
23 counsel on July 14, 2015, and also provided a joint stipulation pursuant to Local
24 Rule 37-2.2. (Ding Dec. ¶¶ 12-13, Exs. 8-9.) Yet again, plaintiffs did not respond.
25 (Ding Dec. ¶ 14.) As of the filing of this motion, Allstate has not received any
26 documents from Quality Sheds or plaintiffs. (Ding Dec. ¶ 14.)
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1 **III. A MOTION TO COMPEL IS PROPER WHEN A NONPARTY FAILS TO**
2 **RESPOND TO A DEPOSITION SUBPOENA**

3 A motion to compel and contempt hearing are the remedies available when a
4 nonparty fails to comply with a deposition subpoena. Fed. R. Civ. P. Rule 45(g).
5 Under Local Rule 45-1, a party may utilize the motion to compel procedures under
6 Local Rule 37 for discovery subpoenas.¹ Because Quality Sheds failed to timely
7 produce documents in response to Allstate's subpoena, Allstate has the right to seek
8 a court order compelling compliance and requiring Quality Sheds to show cause for
9 its noncompliance under Rules 37 and 45.

10 Under Rule 45 of the Federal Rules of Civil Procedure, a party may serve a
11 subpoena that commands any person to produce designated documents. The
12 subpoena served on Quality Sheds requests basic information regarding plaintiff
13 Matthew Poturich's income, rental agreements, potential clients, and employees.
14 (Ding Dec. ¶ 3, Ex. 1.) Quality Sheds' responsive documents were originally due
15 on June 5, 2015, and plaintiffs' counsel agreed to produce them on July 13, 2015.
16 (Ding Dec. ¶¶ 3, 11.) Yet to date, Quality Sheds has produced no documents. (Ding
17 Dec. ¶ 14.)

18 Because Quality Sheds, Inc. failed to serve timely responses, it has waived its
19 objections to Allstate's subpoena. *Moon v. SCP Pool Corp.*, 232 F.R.D. 633, 636
20 (C.D. Cal. 2005) ("A nonparty's failure to timely make objections to a Rule 45
21 subpoena duces tecum generally requires the court to find that any objections have
22 been waived."). Therefore, the Court should be require Quality Sheds to produce
23 responsive documents to Allstate's subpoena without objections.

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27 ¹ Rule 37(a)(3)(B) allows a party to file a motion to compel (i) responses to
28 interrogatories and (ii) responses to document requests.

1 **IV. MONETARY SANCTIONS ARE APPROPRIATE WHERE PLAINTIFFS'**
2 **COUNSEL FAILED TO COOPERATE**

3 Federal Rule of Civil Procedure Rule 45(g) allows the Court to hold in
4 contempt a person who, having been served, fails without adequate excuse to obey a
5 subpoena. *VISX, Inc. v. Nidek Co.*, 208 F.R.D. 615, 616 (N.D. Cal 2002) (“[T]he
6 only procedure for enforcing a subpoena duces tecum is to institute contempt
7 proceedings before the district court that issued the subpoena.”). A subpoena issued
8 by an attorney is the same as a court order for purposes of contempt proceedings.
9 Fed. R. Civ. P. 45(e). *United States Securities & Exch. Comm'n v. Hyatt*, 621 F.3d
10 687, 693 (7th Cir. 2010) (“[A]ll discovery subpoenas are contempt-sanctionable
11 orders of the court whether issued in blank by the clerk or by an attorney as an
12 officer of the court.”).

13 In addition to being held in contempt, a Court may also require the nonparty
14 to pay for expenses and attorney fees involved in bringing the motion to compel and
15 application for show cause order. *General Ins. Co. of America v. Eastern*
16 *Consolidated Utilities, Inc.*, 126 F.3d 215, 220 (3rd Cir. 1997) (ordering nonparty to
17 pay \$500 for expenses and attorney fees for failure to comply with order re
18 subpoena). As already discussed above, Allstate provided an extension for Quality
19 Sheds to respond to its subpoena and attempted to meet and confer regarding the
20 subpoena on multiple occasions. Over two months after the subpoena was initially
21 served, Allstate has still received no documents in response to its subpoena, thereby
22 necessitating the present motion.

23 As set forth in the Declaration of Christina Ding, over five hours was spent
24 researching and preparing this motion, including the supporting declaration and
25 exhibits. (Ding Dec. ¶ 15.) It is anticipated that, at a minimum, an additional two
26 hours will be spent in connection with preparing a reply brief and one hour handling
27 the hearing on this matter. (*Id.*) Therefore, Allstate requests that it be awarded costs
28 to bring this motion in the amount of \$2,960.00, pursuant to Local Rule 37-4.

1 **V. CONCLUSION**

2 Based on Quality Sheds' noncompliance as outlined above, Allstate
3 respectfully requests that this Court order the following:

- 4 (1) Quality Sheds has waived all objections to Allstate's subpoena;
5 (2) Quality Sheds must produce documents responsive to Allstate's
6 subpoena without objections within 20 days of the Court's order;
7 (3) Under Rule 45(g), that Quality Sheds show cause why a contempt
8 citation should not be issued against it; and
9 (4) Quality Sheds and plaintiffs' counsel should be sanctioned \$2,960 for
10 Allstate's costs to bring this motion.

11
12 Dated: July 22, 2015

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

13
14 By s/ Christina Ding
15 CHRISTINA DING

16 Attorneys for Allstate Insurance Company
17 (erroneously sued also as Allstate Property and
18 Casualty Insurance Company)
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